REMARKS/ARGUMENTS

1. In the above referenced Office Action, the Examiner issued a restriction under 35 USC § 121 in accordance with the following grouping of claims:

I. Claims 1-4, 13, 14, 18, 19, 27 – 29, 32, 33, 41-43 and 46 are, drawn to a Device for Processing Data, classified in class 700, subclass 94.

II. Claims 5, 9, 20, and 34, are drawn to Data Processing Circuitry, classified in class 712, subclass 1.

III. Claims 6, 10, 15, 21, 24, 35, and 38 are, drawn to a Tranceiving Module, classified in class 710, subclass 106.

IV. Claims 11, 16, 25, 30, 39 and 44 are drawn to a Data Demodulator, classified in class 329, subclass 372.

V. Claims 12, 17, 26, 31, 40 and 45 are drawn to a Combining Circuit, classified in class 455, subclass 273.

VI. Claims 7, 8, 22, 23, 36 and 37 are, drawn to a Data Extraction Circuit, classified in class 702, subclass 190.

The applicant respectfully disagrees with the Examiner's species classification of the present patent application and requests withdraw of the restriction request. Pursuant to 37 CFR 1.143, the applicant provisionally elects the claims of group 1. The applicant is not canceling any of the 46 claims at this time.

In support of the applicants request for withdraw of the restriction, the applicant states:

1. The present patent application includes a total of 46 claims, with claims 1, 14, 19, 28, 33, and 42 being

independent claims. Claim 1 is for a device for processing content data that includes data processing circuitry, content processing module, and a transceiving module. Claim 14 is for a device for processing content data that includes data processing circuitry, content processing module, and a transceiving module. Claims 19 and 28 are methods for processing content data. Claim 33 is a device for processing content data in accordance with the method of claim 19. Claim 42 is a device processing content data in accordance with the method of claim 28.

Claims 2 - 13 are dependent upon claim 1, and hence include all of the limitations of claim 1.

Claims 15 - 17 are dependent upon claim 14, and hence include all of the limitations of claim 14.

Claims 20 - 26 are dependent upon claim 19, and hence include all of the limitations of claim 19.

Claims 29 -32 are dependent upon claim 28, and hence include all of the limitations of claim 28.

Claims 34 - 40 are dependent upon claim 33, and hence include all of the limitations of claim 33.

Claims 43 - 46 are dependent upon claim 42, and hence include all of the limitations of claim 42.

As such, all of the claims pertain to either a method or a device for processing content data.

2. Statutes and Rules regarding restrictions include, in part:

a. 35 USC § 121 - Divisional Applications

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions.

b. 37 CFR 1.141(a) - Different inventions in one national application.

(a) Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

c. 37 CR 1.142 - Requirement for restriction.

(b) Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled.

d. MPEP 806.04(a) Species – Genus
35 U.S.C. 121 provides that restriction may be required to one of two or more independent and distinct inventions. However, 37 CFR 1.141 provides that a reasonable number of species may still be claimed in one application if the other conditions of the rule are met.

e. MPEP 803 Restriction - When Proper

Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct.

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

CRITERIA FOR RESTRICTION BETWEEN PATENTABLY DISTINCT INVENTIONS

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 -§ 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) -§ 806.04(i), § 808.01(a), and § 808.02).

f. MPEP 802.01 Meaning of "Independent" and "Distinct"

INDEPENDENT

The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of being used in practicing the process.

DISTINCT

The term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art). It will be noted that in this

definition the term related is used as an alternative for dependent in referring to subjects other than independent subjects.

It is further noted that the terms "independent" and "distinct" are used in decisions with varying meanings. All decisions should be read carefully to determine the meaning intended.

g. MPEP 806.04 Independent Inventions

If it can be shown that the two or more inventions are in fact independent, applicant should be required to restrict the claims presented to but one of such independent inventions. For example:

(A) Two different combinations, not disclosed as capable of use together, having different modes of operation, different functions or different effects are independent. An article of apparel such as a shoe, and a locomotive bearing would be an example. A process of painting a house and a process of boring a well would be a second example.

(B) Where the two inventions are process and apparatus, and the apparatus cannot be used to practice the process or any part thereof, they are independent. A specific process of molding is independent from a molding apparatus which cannot be used to practice the specific process.

(C) Where species under a genus are independent, for example, a genus of paper clips having species differing in the manner in which a section of the wire is formed in order to achieve a greater increase in its holding power.

h. MPEP 806.04(d) - Definition of a Generic Claim

For the purpose of obtaining claims to more than one species in the same case, the generic claim cannot include limitations not present in each of the added species claims. Otherwise stated, the claims to the species which can be included in a case in addition to a single species must contain all the limitations of the generic claim.

Once a claim that is determined to be generic is allowed, all of the claims drawn to species in addition to the

elected species which include all the limitations of the generic claim will ordinarily be obviously allowable in view of the allowance of the generic claim, since the additional species will depend thereon or otherwise include all of the limitations thereof. When all or some of the claims directed to one of the species in addition to the elected species do not include all the limitations of the generic claim, then that species cannot be claimed in the same case with the other species. See MPEP § 809.02(c).

i. MPEP 806.04(e) - Claims Restricted to Species

Claims are definitions of inventions. *Claims are never species*. Claims may be restricted to a single disclosed embodiment (i.e., a single species, and thus be designated a *specific species claim*), or a claim may include two or more of the disclosed embodiments within the breadth and scope of definition (and thus be designated *a generic or genus claim)*.

> *Species are always the specifically different embodiments.*
>
> Species are *usually* but not always independent as disclosed (see MPEP § 806.04(b)) since there is usually no disclosure of relationship therebetween. The fact that a genus for two different embodiments is capable of being conceived and defined, does not affect the independence of the embodiments, where the case under consideration contains no disclosure of any commonality of operation, function or effect.

j. MPEP 806.04(f) - Claims Restricted to Species, by Mutually Exclusive Characteristics

> Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

As is ascertainable from the above cited sections of the statutes, rules, and MPEP, species are *usually* but not always independent as disclosed (see MPEP § 806.04(b)) since there is usually no disclosure of relationship therebetween. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.

In the present patent application, each of the independent claims provides a method or a device for processing content data. The devices of claims 1 and 14 include data processing circuitry, content processing module, and a transceiving module as is generally shown in Figures 2 - 4. The dependent claims for each of claims 1 and 14 provide further limitations of the limitations of the independent claims, which are shown in the subsequent figures. In light of this, the Examiner's groupings that involve claims 1 - 18 do not pass the independent species test since the limitations of the independent claims are common for each of the dependent claims, wherein the dependent claims add further limitations of the limitations of the corresponding independent claim. Further, the examination of these claims can be made without serious burden on the Examiner.

Claims 19 and 28 are methods for processing content data. Claim 33 is a device for processing content data in accordance with the method of claim 19. Claim 42 is a device processing content data in accordance with the

method of claim 28. The applicant believes that claims 19 - 46 do not pass the independent species test and that the examination of these claims can be made without serious burden on the Examiner.

For the foregoing reasons, the applicant requests that the Examiner withdraw the restriction.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF MAILING

37 C.F.R 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Alexandria, Virginia 22313, on the date below:

2-28-05 Diane Hudson

Date Signature